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EXAMINER	
JAWORSKI, F	
ART UNIT	PAPER NUMBER
335	

DATE MAILED: 07/20/81 *20*

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined. Responsive to communication filed on *March 16, 1981* This action is made final.

A shortened statutory period for response to this action is set to expire *Three* month(s), *—* days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892 2. Notice of Informal Patent Drawing, PTO-948
3. Notice of References Cited by Applicant, PTO-1449 4. Notice of Informal Patent Application, Form PTO-152

Part II SUMMARY OF ACTION

5. _____

1. Claims *1-26, 28-38, 41 - 54, 57-84* are pending in the application.
Of the above, claims *1-26, 42-54* are withdrawn from consideration.

2. Claims *27, 39-40, 55-56* have been cancelled.

3. Claims _____ are allowed.

4. Claims *28-38, 41, 57-84* are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. The formal drawings filed on _____ are acceptable.

8. The drawing correction request filed on *Mar 16, 1981* has been approved. disapproved.

9. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has
 been received. not been received. been filed in parent application, serial no. _____,
filed on _____.

10. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

11. Other

The amendment inserts to page 2, line 7 describing the deficiencies of the Ellinwood device and to page 3, line 13 elaborating on species of diaphragm are objected to as containing new matter, i.e. matter not inherent from the original disclosure, and cancellation is requested.

The specification contains redundant page numbering, disallowed under 37 C.F.R. 1.52(b), and should be corrected.

I. Claims 27-38, 41, 55-72 and 73-65, 79-84 as subsequently added are directed to a programmable infusion system classified in Class 128/213R, elected without traverse in Paper No. 11 filed May 29, 1980, and applicant has received an action on all the above claims save the most recently added.

II. Claims 76-78 are directed to a method of placing and maintaining medicaments beneath the skin, classified in Class 128/215, necessarily distinct from the elected invention. Applicant is required to restrict the claims to the invention previously elected and thus the claims of the latter group are held withdrawn from further consideration by the examiner, 37 C.F.R. 1.142(b).

Claims 28-38, 41, 57-66, 68-75 are rejected under 35 U.S.C. 112, paragraph 2, as vague and indefinite on two bases. First the language "implanted within the body" in claim 73 is an inferential claim to the human body, rendering it unclear whether the device must be found as an implant in a living subject before infringement would occur. Second, the location and indeed recitation of the medicament source if any is not present and therefore the claim is incomplete. Dependent claims inherit the defects. Suggest claim to an --implant--, or --adapted for implantation within the body...--.

Claim 73 is rejected under 35 U.S.C. 102/103 as fully met or obvious over Walters. In the absence of claim recitation of a medicament reservoir, merely an implantable controller is being claimed. A programmable pacemaker may indirectly control for example release of natural substances in the body whose secretion and distribution is dependent on heart rate.

Claims 79-84 are rejected under 35 U.S.C. 103 as obvious over Clemens. Claim 79 reads on any roller pump-IV line combination, for example. Obvious to have a pump and line in Clemens. Obvious to have pump controls in Clemens (claims 80-81). Figure 1 shows various housings. Obvious to enclose components in a housing (claim 82). Clearly at least one part of a housing, e.g. a screw or washer, is small enough to implant (claim 83). Clemens is patient-programmable, by a knowledgeable patient. Design choice whether to telemetrize communications to a programmable unit, in the general sense.

Prior art submitted by the applicant has been reviewed for pertinence and will be made of record with the final action in this case.

This action is not made final however the case should be prepared for final action.

F. Jaworski/mb
703/557/3144
7/8/81

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GROUP ART UNIT 335